

V. Specific Services

A. General Comments

As noted above, it is not necessary for the Commission to draw definite conclusions, at this time, as to whether existing mixed-use services should be subject to competitive bidding. UTC urges the Commission to make a finding pursuant to Section 309(j)(2) of the Communications Act and Section 6002(e) of the Budget Act that existing mixed-use services should remain subject to lotteries, at least until the Commission has the opportunity to review, and revise through further rulemaking, if necessary, the basic eligibility and operational requirements of these existing services.

Section 6002(e) of the Budget Act permits the FCC to continue using lotteries, provided at least one of two conditions are met: (1) the FCC makes the determination required under Section 309(i)(1)(B), i.e., that the "use is not one described in subsection (j)(2)(A); or (2) applications were accepted for filing prior to July 26, 1993.

Section 309(j)(2)(A) permits the Commission to use competitive bidding if (1) the "principal use of such spectrum will involve, or is reasonably likely to involve,

the licensee receiving compensation from subscribers" for the transmission or reception of communications signals, and (2) use of bidding will promote the objectives of subsection (j)(3), which provides, in pertinent part as follows:

In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

Section 309(j)(3) goes on to list several objectives, including: (1) the development of new technologies and services; (2) the promotion of economic opportunity and the avoidance of excessive concentration of licenses by disseminating licenses among a wide variety of applicants; (3) recovery for the federal treasury of a portion of the value of the spectrum; and (4) efficient and intensive use of the spectrum.

Private, noncommercial services that share spectrum with commercial services cannot compete with commercial services in competitive bidding. When mixed-use services were established, eligibility rules were developed without regard to auctioning. On the other hand, if the FCC were

to consider whether to create a new mixed-use service, auctioning necessarily would be a factor in this decision, since, under Section 309(j)(3), the Commission is to consider "eligibility and other characteristics" when identifying classes of licenses to be auctioned.

In the case of existing mixed-use services, the Commission has already made a public interest finding that commercial and noncommercial eligibles can adequately compete, through lotteries, for new licenses. Forcing these mixed-use bands into competitive bidding would undermine the Commission's previous allocation decisions, and would not be in the public interest. Therefore, the Commission should make a finding, under Section 309(j)(2) and Section 6002(e) that use of auctions in mixed-use services would not promote economic opportunity, avoid excessive concentration of licenses, disseminate licenses among a wide variety of applicants or result in an efficient use of spectrum, nor would it promote the public interest or achieve the purposes specified in Section 1 of the Communications Act.^{19/}

^{19/} Section 1 of the Communications Act mandates, among other things, that the Commission make communications service available "for the purpose of promoting safety of life and property." The private radio services were established to meet this very purpose.

B. Personal Communications Services (PCS)

UTC agrees that Personal Communications Services (PCS), as currently defined by the Second Report and Order in GEN Docket No. 90-314, FCC 93-451, released October 22, 1993, would be primarily commercial services. It seems apparent that the service areas, frequency bandwidths, and coverage requirements adopted in that docket are conducive only to the development of commercial PCS systems, and that the Commission does not intend PCS to be used by private, noncommercial applicants. Therefore, as presently defined, the Commission is probably constrained by Section 309(j)(2) to selecting all PCS licensees through competitive bidding.

This result points out the need for the Commission to reserve at least some 2 GHz spectrum for the development of private emerging technology systems. When the currently-defined operating requirements for PCS systems are combined with the probable requirement that this spectrum will be subject to competitive bidding, it is virtually certain that no private emerging technology systems will be developed in this spectrum.

UTC will address these issues in the context of Docket 90-314, but the Commission should not rush to declare all PCS or PCS-like services as "commercial" until it has an

opportunity to reconsider making separate allocations for noncommercial emerging technology services.

C. Private Radio Services

1. 220 MHz Land Mobile

"Local" licenses in the 220-222 MHz band may be used for commercial, noncommercial or Federal government purposes.^{20/} Since there are virtually no restrictions on eligibility, the preferred approach to selecting among future mutually-exclusive applicants in this spectrum would be to employ lotteries.

Because the Commission is only now beginning to grant "local" licenses in this band, it is premature to determine whether this will be primarily a commercial or noncommercial service. Many applications were filed during the initial filing window by UTC members requesting authorizations to install systems to meet their internal communications requirements.^{21/} Even if many of the speculative applications submitted during the initial filing window were for the purpose of establishing

^{20/} 47 C.F.R. §90.719.

^{21/} Further interest by utilities in use of the 220 MHz band is apparent in the nearly 30 utilities which comprise the Utility Cooperative Communications Service (UCCS), an applicant for nationwide channels in the 220 MHz band.

commercial service, it is unclear whether commercial service will be viable in this band, employing new 5 kHz narrowband technology.

The Commission has requested comment on whether it would be consistent with Section 309(j) to subject all local 220 MHz licenses to competitive bidding, with the exception of channels reserved for exclusively public safety purposes.^{22/} UTC opposes this suggestion. Many noncommercial entities other than traditional "public safety" eligibles would like to use the 220 MHz band, but would be precluded from doing so if auctions are used for all non-public safety channels. If the Commission feels compelled to use auctions in this mixed-use band, it should limit the use of auctions to mutually-exclusive situations involving only commercial service applicants.^{23/}

UTC agrees with the Commission's tentative conclusion that 220 MHz noncommercial nationwide licenses should

^{22/} NPRM at para. 133.

^{23/} UTC acknowledges, however, that this approach carries the potential for a "commercial" applicant wishing to avoid auctions to solicit the filing of a mutually-exclusive "noncommercial" application from a friendly third-party so that the possibility of competitive bidding would be defeated. For this reason, UTC does not strongly endorse the partial use of competitive bidding in mixed-use bands; instead, UTC recommends use of lotteries until eligibility and service rules for mixed-use bands can be reviewed.

continue to be subject to lotteries because the rules specifically limit these licenses to the provision of noncommercial service. In fact, the eligibility and service rules for 220 MHz noncommercial nationwide licenses would serve as good models for "splitting" mixed-use bands into commercial and noncommercial components.

2. General Category Channels and Intercategory Sharing

UTC agrees with the FCC's assessment that Congress did not intend General Category land mobile channels or channels obtained through intercategory sharing to be subject to competitive bidding.^{24/} Utilities make extensive use of 800/900 MHz Industrial/Land Transportation channels, and there is increasing interest in these bands due to the wider availability of high quality, efficient radio equipment that is adaptable to the wide area systems needed to meet utility coverage and operational requirements. Utilities would not be able to establish these systems with sufficient channel capacity if they were not permitted to use General Category channels or secure channels through intercategory sharing, or if they were forced to compete with commercial service providers in competitive bidding.

^{24/} NPRM at para. 139.

General Category channels and channels obtained through intercategory sharing were not allocated principally for commercial purposes and are in fact available on an equal basis for noncommercial purposes. Hence, it would be unreasonable for the Commission to find that the "principal use" of these channels is for rendition of subscriber services. UTC therefore recommends that the Commission continue use of lotteries to resolve any mutually-exclusive situations involving these channels.^{25/}

The Commission also requests comment on whether mutually-exclusive "finder's preference" requests should be subject to competitive bidding.^{26/} Although finder's preference requests are not, per se, applications for initial licenses or permits, they are the functional equivalent since they are requests by interested parties for authority to acquire the spectrum rights held by current licensees who are (allegedly) in violation of the Rules. As with other cases where commercial and noncommercial applicants might be mutually-exclusive, UTC recommends continued use of lotteries for mutually exclusive finder's preference requests.

^{25/} In the alternative, UTC would not oppose (but does not specifically endorse) the use of competitive bidding if only commercial service applications are found to be mutually exclusive for a particular channel or group of channels. See n.23, supra.

^{26/} NPRM at n.139.

3. Private Land Mobile at 470-512 MHz

UTC agrees with the FCC's tentative conclusion that the primary use of these frequencies is by entities that must share use of the spectrum.^{27/} In addition, UTC believes that the predominant use of these frequencies is by private licensees and not for rendition of commercial services.

4. Multiple Address Systems

The predominant use of Multiple Address Systems (MAS) under Part 94 has been for private, internal use.^{28/} Utilities and pipeline companies rely heavily on MAS systems for telemetry and other internal communications requirements. These licensees could not compete in competitive bidding with commercial service providers, and should not be required to bid for the right to operate these essential communications systems.

With respect to the new MAS channels at 932/941 MHz, it is unclear whether most of the applications filed for these channels were submitted for commercial use or for

^{27/} NPRM at para. 145 and n.154

^{28/} UTC notes that one large commercial service provider using Part 94 MAS frequencies, Digital Radio Networks, terminated operations.

private and federal government use. As argued above, such mixed-use bands should remain subject to lotteries until the FCC can review and make changes, if appropriate, in the eligibility and service rules.

5. Private Land Mobile Below 470 MHz

The private land mobile bands below 470 MHz, with the exception of the 220-222 MHz band, involve use of shared spectrum. Thus, under the current rules there can be no mutual exclusivity. In any event, the overwhelming majority of systems in these bands are used to meet the licensees' private, internal communications requirements. Thus, these bands are not appropriate for the use of competitive bidding.

6. Private Operational Fixed Microwave Service

The vast majority of microwave links in the Private Operational Fixed Service are used to meet the licensees' private, internal communications requirements, and are not used for "subscriber" services. In any event, instances of mutual exclusivity are very rare due to the one-day filing windows used in Part 94. UTC further agrees with the FCC's proposal to specifically exempt from auctions entities who are forced to relocate from the 2 GHz

band due to the rules and policies adopted in ET Docket No. 92-9.^{29/}

7. Multiple Licensed Systems Below 800 MHz

The Commission's Rules permit shared use and multiple licensing of private land mobile facilities below 800 MHz.^{30/} For example, a generation and transmission (G&T) electric cooperative might design and manage a wide area radio system for use by the local distribution cooperatives which collectively own and control the G&T cooperative. This system would be licensed in the name of the G&T cooperative, but the system would be operated on a non-profit, cost-sharing basis by the individual distribution cooperatives. Such shared-use systems are an efficient use of the spectrum, and help to reduce the costs to the cooperatives' members (i.e., electric customers). UTC therefore urges the Commission not to consider shared use systems, whether above or below 800 MHz as "commercial" systems for purposes of the competitive bidding rules.^{31/}

^{29/} NPRM at n.118.

^{30/} 47 C.F.R. §§90.179 and 90.185.

^{31/} While most of the private land mobile spectrum below 800 MHz is shared spectrum and not subject to the filing of mutually exclusive applications, exclusivity is possible in the 470-512 MHz band as well as the 220-222 MHz band. For example, UCCS has been established to operate a non-profit, shared-use system on nationwide 220 MHz

(continued...)

D. Common Carrier Radio Services

UTC agrees with the Commission's tentative conclusion that most common carrier radio services would be subject to competitive bidding under Section 309(j).^{32/} However, it must be noted that some frequency bands are shared between common carriers and private users, raising the possibility of mutually exclusive applications between "commercial" and "private" users.

1. Point-to-Point Microwave Service

As noted above, some common carrier point-to-point microwave bands, available under Part 21, have been shared with private users, under Part 94, for many years.^{33/} Other bands have just recently been made available for mixed-use.^{34/} Some point-to-point bands are even shared

^{31/}(...continued)
frequencies to meet the internal communications requirements of the utilities comprising UCCS. The Commission should continue to treat non-profit, shared use systems as "private" for purposes of spectrum auctioning.

^{32/} NPRM at para. 147 et seq.

^{33/} E.g., the 21-23 GHz band.

^{34/} E.g., the 4, 6, 10, and 11 GHz point-to-point microwave bands. See Second Report and Order in ET Docket No. 92-9, 8 FCC Rcd 6495 (1993).

among common carrier users, private users, and federal government agencies.^{35/}

Additional band sharing was authorized by the Commission in ET Docket No. 92-9 because of the need to reaccommodate microwave systems displaced from the 2 GHz band in order accommodate emerging technologies. Even though the Commission has proposed to specifically exempt from auctioning any relocation applications filed by existing 2 GHz microwave licensees, it would disserve the public interest if applicants for new private microwave systems are also required to compete in auctions with common carrier applicants just because the 2 GHz private microwave bands are no longer available. UTC therefore urges continued use of lotteries, if necessary, to select from among mutually exclusive point-to-point applicants.

UTC also urges the use of lotteries even for "exclusive" common carrier point-to-point microwave bands. If some microwave bands are available only through competitive bidding, while others are available through lottery, it might create artificial incentives for common carrier applicants to select only the "mixed use" bands in order to avoid the possibility of competitive bidding.

^{35/} E.g., the 932/941 MHz point-to-point channels.

In any event, it must be acknowledged that the instances of mutual exclusivity among point-to-point microwave applicants is extremely rare due to the coordination procedures of Section 21.100. These procedures require the giving of prior coordination notices to all potentially affected applicants and licensees, and greatly aid in efficient spectrum management and the avoidance of mutually exclusive situations. Therefore, a general exemption for the point-to-point microwave services would not significantly affect any expectation of federal revenue through auction proceeds.

2. Public Paging Services

Public paging licensees have access under Part 22 to certain "control station" frequencies in the 932/941 MHz bands and the 928/959 MHz bands^{36/} that are shared with "private" licensees under Part 94.^{37/} Further, the 932/941 MHz frequencies are also shared with federal government users. UTC urges the Commission to exempt these "mixed use" frequencies from competitive bidding for the same reasons noted above.

^{36/} 47 C.F.R. §22.501.

^{37/} 47 C.F.R. §94.65.

VI. Conclusion

The primary consideration in this docket should be the development of effective competitive bidding rules for Personal Communications Services. While UTC agrees with the Commission's desire to develop a variety of auctioning rules that could be applied to any relevant radio service, UTC urges the Commission to carefully assess the application of any such auctioning rules so that noncommercial services or users will not be disadvantaged in securing access to needed spectrum.


Competitive bidding should be applied to existing radio services only conservatively. That is, in the case of any doubt as to whether a service has been created primarily to meet the needs of commercial service providers or to meet the needs of private users, lotteries should continue to be used. If necessary, the Commission could institute further proceedings to review the eligibility and operational rules of "mixed use" services or frequency bands to determine whether additional provisions should be added that would permit auctioning among commercial applicants while retaining lotteries for use among noncommercial applicants.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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foregoing comments was hand delivered, this 10th day of November,
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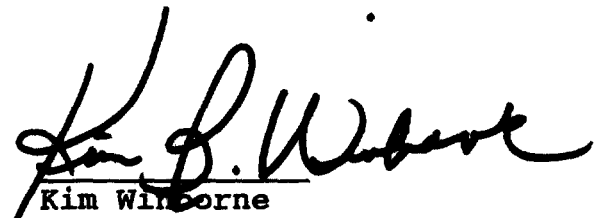
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